



STATE OF WISCONSIN
Division of Hearings and Appeals

In the Matter of

Office of the Inspector General, Petitioner

vs.

██████████ Respondent

DECISION

Case #: FOF - 171533

Pursuant to petition filed January 19, 2016, under Wis. Admin. Code §HA 3.03, and 7 C.F.R. § 273.16, to review a decision by the Office of the Inspector General to disqualify ██████████ from receiving FoodShare benefits (FS) one year, a hearing was held on Tuesday, March 1, 2016 at 11:15 AM at , Wisconsin.

The issue for determination is whether the respondent committed an Intentional Program Violation (IPV).

There appeared at that time the following persons:

PARTIES IN INTEREST:

Petitioner:

Office of the Inspector General
Department of Health Services - OIG
PO Box 309
Madison, WI 53701

Respondent:

██████████
██████████
████████████████████

█

ADMINISTRATIVE LAW JUDGE:

Debra Bursinger
Division of Hearings and Appeals

FINDINGS OF FACT

1. The respondent (CARES # ██████████) is a resident of Milwaukee County who received FS benefits in Milwaukee County from February 6, 2014 through April 1, 2015.
2. On April 21, 2014, the respondent submitted a FS renewal. She reported herself and her son ██████ in the household. She reported ██████ was a full-time high school student. She reported no earned income for the household. The agency obtained information that the respondent was employed with ██████████

██████████. The case was pended for income and employment verification. On May 13, 2014, the agency received employment and income verification from ██████████. Respondent submitted a written statement that she was no longer working for ██████████. On May 22, 2014, the agency issued a Notice of Decision to the respondent informing her that she was approved for FS benefits for herself and ██████████. The notice also informed her of the requirement to report to the agency by the 10th day of the next month if gross household income exceeded \$1310.83.

3. On October 13, 2014, the respondent submitted a renewal application. She reported herself and ██████████ in the household. She reported her job with ██████████ with a start date of January 1, 2014. The case was pended for verification of income for respondent and for ██████████ at ██████████. On October 14, 2014, the respondent reported ██████████ had not worked for ██████████ since July, 2014. On October 17, 2014, the agency issued a Notice of Decision to the respondent informing her that FS benefits would end effective November 1, 2014 due to respondent not completing her renewal.
4. On November 16, 2014, the respondent submitted an online change report. She reported ██████████'s employment with ██████████ ██████████ ended on June 15, 2014. No verification was received.
5. On December 18, 2014, the respondent reapplied for FS benefits. She reported herself and ██████████ in the household. She reported her employment with ██████████ ██████████ but it was noted that she is on a medical leave. The case was pended for verification of employment status and income with ██████████. On January 8, 2015, the agency received requested verification. On January 9, 2015, the agency issued a Notice of Decision to the respondent informing her that she was approved for benefits for herself and ██████████. The notice also informed her of the requirement to report to the agency by the 10th day of the next month if gross household income exceeded \$1310.83.
6. On April 28, 2015, the respondent submitted an online renewal. She reported herself and ██████████ in the household. She reported her employment with ██████████ ██████████ ended on November 18, 2014.
7. On June 3, 2015, ██████████ contacted the agency to report his employment with ██████████ since April, 2014.
8. On June 17, 2015, the agency issued a Notice of Decision to the respondent informing her that her FS benefits would end July 1, 2015 for failure to provide requested verifications.
9. On June 30, 2015, the agency received pay statements for ██████████ from ██████████.
10. On July 7, 2015, the respondent re-applied for FS benefits. She reported herself and ██████████ in the household. She reported ██████████'s employment with ██████████ with a start date of April 22, 2015. On July 8, 2015, the agency issued a Notice of Decision to the respondent informing her that her application was approved for FS benefits for herself and ██████████. The notice also informed her of the requirement to report to the agency by the 10th day of the next month if gross household income exceeded \$1705.
11. On October 5, 2015, the agency received employer records for ██████████ from ██████████ and ██████████. The records indicated that ██████████ started work with the ██████████ agency on April 3, 2015 and received his first paycheck on April 15, 2015. The records indicated that ██████████ started work at ██████████ on April 15, 2014 and received his first paycheck on July 21, 2014. The records indicated that ██████████'s employment at ██████████ ended July 17, 2015.
12. On October 19, 2015, the respondent contacted the agency to report ██████████ was no longer in her household. At all times when ██████████ was living with the respondent during the relevant time period, he was under age 22.
13. On January 25, 2016, the petitioner prepared an Administrative Disqualification Hearing Notice alleging that respondent failed to accurately report the household's earned income.

DISCUSSION

An intentional program violation of the FoodShare program occurs when a recipient intentionally does the following:

1. makes a false or misleading statement, or misrepresents, conceals or withholds facts;
or

2. commits any act that constitutes a violation of the Food Stamp Act, the Food Stamp Program Regulations, or any Wisconsin statute for the purpose of using, presenting, transferring, acquiring, receiving, possessing or trafficking of FoodShare benefits or QUEST cards.

FoodShare Wisconsin Handbook, § 3.14.1; *see also* 7 C.F.R. § 273.16(c) and Wis. Stat. §§ 946.92(2).

An intentional program violation can be proven by a court order, a diversion agreement entered into with the local district attorney, a waiver of a right to a hearing, or an administrative disqualification hearing, *FoodShare Wisconsin Handbook*, § 3.14.1. The petitioner can disqualify only the individual found to have committed the intentional violation; it cannot disqualify the entire household. Those disqualified on grounds involving the improper transfer of FS benefits are ineligible to participate in the FoodShare program for one year for the first violation, two years for the second violation, and permanently for the third violation. Although other family members cannot be disqualified, their monthly allotments will be reduced unless they agree to make restitution within 30 days of the date that the FS program mails a written demand letter. 7 C.F.R. § 273.16(b).

In order for the petitioner to establish that an FS recipient has committed an IPV, it has the burden to prove two separate elements by clear and convincing evidence. The recipient must have: 1) committed; and 2) intended to commit a program violation per 7 C.F.R. § 273.16(e)(6). In *Kuehn v. Kuehn*, 11 Wis.2d 15 (1959), the court held that:

Defined in terms of quantity of proof, reasonable certitude or reasonable certainty in ordinary civil cases may be attained by or be based on a mere or fair preponderance of the evidence. Such certainty need not necessarily exclude the probability that the contrary conclusion may be true. In fraud cases it has been stated the preponderance of the evidence should be clear and satisfactory to indicate or sustain a greater degree of certitude. Such degree of certitude has also been defined as being produced by clear, satisfactory, and convincing evidence. Such evidence, however, need not eliminate a reasonable doubt that the alternative or opposite conclusion may be true. ...

Kuehn, 11 Wis.2d at 26.

Wisconsin Jury Instruction – Civil 205 is also instructive. It provides:

Clear, satisfactory and convincing evidence is evidence which when weighed against that opposed to it clearly has more convincing power. It is evidence which satisfies and convinces you that “yes” should be the answer because of its greater weight and clear convincing power. “Reasonable certainty” means that you are persuaded based upon a rational consideration of the evidence. Absolute certainty is not required, but a guess is not enough to meet the burden of proof. This burden of proof is known as the “middle burden.” The evidence required to meet this burden of proof must be more convincing than merely the greater weight of the credible evidence but may be less than beyond a reasonable doubt.

Further, the *McCormick* treatise states that “it has been persuasively suggested that [the clear and convincing evidence standard of proof] could be more simply and intelligibly translated to the jury if they were instructed that they must be persuaded that the truth of the contention is highly probable.” 2 *McCormick on Evidence* § 340 (John W. Strong gen. ed., 4th ed. 1992).

Thus, in order to find that an IPV was committed, the trier of fact must derive from the evidence a firm conviction as to the existence of each of the two elements even though there may be a reasonable doubt as to their existence.

In order to prove the second element, i.e., intention, there must be clear and convincing evidence that the FS recipient intended to commit the IPV. The question of intent is generally one to be determined by the trier of fact. *State v. Lossman*, 118 Wis.2d 526 (1984). There is a general rule that a person is presumed to know and intend the probable and natural consequences of his or her own voluntary words or acts. *See, John F. Jelke Co. v. Beck*,

208 Wis. 650 (1932); 31A C.J.S. Evidence §131. Intention is a subjective state of mind to be determined upon all the facts. *Lecus v. American Mut. Ins. Co. of Boston*, 81 Wis.2d 183 (1977). Thus, there must be clear and convincing evidence that the FS recipient knew that the act or omission was a violation of the FS Program but committed the violation anyway.

The agency's evidence establishes that [REDACTED] started work at [REDACTED] in April, 2014. The respondent did not report his employment or income in applications submitted to the agency in April, 2014, October, 2014, December, 2014 or April, 2015. In addition, the evidence establishes that [REDACTED] started employment with an [REDACTED] agency in April, 2015 and the respondent did not report this change to the agency as required.

At the hearing, the respondent asserted that she was not aware that [REDACTED] was employed or had income. She testified that he was an adult, that he was living with her but that he did his own thing. She stated he was in and out of her house frequently and she did not know what he was doing. She further stated that she made requests to the agency on several occasions but was told he could not be removed from her case. She also testified that someone else did her renewal applications.

I do not find the respondent's testimony that she was unaware of [REDACTED]'s employment or income to be credible. Further, the case comments indicate that the only time respondent requested to have [REDACTED] removed from her case was in October, 2015 when she reported he was no longer living with her. Prior to that time, the respondent continued to report him as part of her household in every renewal application. Because he was reported as a member of her household and was under age 22, he was required to be a part of her assistance group for purposes of FS benefits. Respondent continued to receive FS benefits for him but never reported his employment or income.

Based upon the record before me, I find that the petitioner has established by clear and convincing evidence that the respondent intentionally violated FS program rules when she repeatedly failed to report [REDACTED]'s employment and income but continued to receive FS benefits for him. This violation was the first such violation committed by the respondent. Therefore, the petitioner correctly seeks to disqualify the respondent from the FS program for one year.

CONCLUSIONS OF LAW

1. The respondent violated, and intended to violate, the FS program rule specifying that applicants/recipients must truthfully and accurately report household income.
2. The violation specified in Conclusion of Law No. 1 is the first such violation committed by the respondent.

NOW, THEREFORE, it is

ORDERED

That the petitioner's determination is sustained, and that the petitioner may make a finding that the respondent committed a first IPV of the FoodShare program and disqualify the respondent from the program for one year, effective the first month following the date of receipt of this decision.

REQUEST FOR A REHEARING ON GROUNDS OF GOOD CAUSE FOR FAILURE TO APPEAR

In instances where the good cause for failure to appear is based upon a showing of non-receipt of the hearing notice, the respondent has 30 days after the date of the written notice of the hearing decision to claim good cause for failure to appear. See 7 C.F.R. sec. 273.16(e)(4). Such a claim should be made in writing to the Division of Hearings and Appeals, P.O. Box 7875, Madison, WI 53707-7875.

APPEAL TO COURT

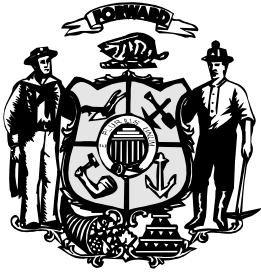
You may also appeal this decision to Circuit Court in the county where you live. Appeals must be filed with the Court **and** served either personally or by certified mail on the Secretary of the Department of Health Services, 1 West Wilson Street, Room 651, Madison, WI 53703, **and** on those identified in this decision as “PARTIES IN INTEREST” **no more than 30 days after the date of this decision** or 30 days after a denial of a timely rehearing request (if you request one).

The process for Circuit Court Appeals may be found at Wis. Stat. §§ 227.52 and 227.53. A copy of the statutes may be found online or at your local library or courthouse.

Given under my hand at the City of Milwaukee,
Wisconsin, this 8th day of April, 2016

\sDebra Bursinger
Administrative Law Judge
Division of Hearings and Appeals

c: Office of the Inspector General - email
Public Assistance Collection Unit - email
Division of Health Care Access and Accountability - email
[REDACTED] - email



State of Wisconsin\DIVISION OF HEARINGS AND APPEALS

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The preceding decision was sent to the following parties on April 8, 2016.

Office of the Inspector General
Public Assistance Collection Unit
Division of Health Care Access and Accountability
[REDACTED]@wisconsin.gov